

# ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsections 455A.6(6)"a," 455B.105(3) and 455B.392(1)"c," the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 133, "Rules for Determining Cleanup Actions and Responsible Parties," Iowa Administrative Code.

Iowa Code section 455B.392(1)"c" provides that a person having control of a substance is strictly liable to the state of Iowa for damages to natural resources caused by a hazardous condition. The Commission has adopted requirements in paragraph 133.6(3)"b" setting out the methods for counting dead fish and assigning a monetary value for specific fish species. These requirements are based on the Natural Resource Commission (NRC) fish restitution rules in 571—Chapter 113. NRC rule-making authority derives from Iowa Code section 481A.151, which authorizes use of both the American Fisheries Society methods and values and also an alternative method for assigning monetary values to game fish valued at not less than \$15 per fish. The NRC has also initiated rule making incorporating the same changes that are proposed herein.

The proposed amendment of rule 567—133.2(455B) redefines the meaning of "AFS," the acronym used for the American Fisheries Society's special publications on fish-counting methods and restitution valuation. The language is updated to state that Special Publication 30, the most current AFS publication regarding fish-counting methods and restitution valuation, shall be used by the Department to determine the amount of fish restitution to be collected. Secondly, the amendment of subparagraph 133.6(3)"b"(3) revises the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 23, 2009. Such written materials should be directed to Tamara Mullen, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-7147; or E-mail [tamara.mullen@dnr.iowa.gov](mailto:tamara.mullen@dnr.iowa.gov). Persons who wish to convey their views orally should contact Tamara Mullen at (515)281-8934 or at the Legal Bureau offices on the Third Floor of the Wallace Building.

Also, there will be a public hearing on October 6, 2009, at 2 p.m., in the Fourth Floor (West) Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 455B.392, 456A.23, and 481A.2.

The following amendments are proposed.

ITEM 1. Amend rule **567—133.2(455B,455E)**, definition of "AFS," as follows:

"AFS" means the Special Publication 24 30, "~~Investigation and Valuation of Fish Kills~~ Monetary Values of Fish and Freshwater Mussel Kills," published by the American Fisheries Society.

ITEM 2. Amend subparagraph **133.6(3)"b"(3)** as follows:

(3) The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except ~~those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae~~

~~(black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger).~~ the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger, and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.